

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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5	MADHUKAR RANA,)	No. CV-10-370-JPH
6	Plaintiff,)	
7	v.)	ORDER FOLLOWING ORAL ARGUMENTS:
8	BAINS INVESTMENTS INC., et)	<input checked="" type="checkbox"/> MOTION FOR LEAVE TO FILE
9	al.,)	SECOND AMENDED ANSWER
10	Defendant.)	<input checked="" type="checkbox"/> MOTION GRANTED
11)	(ECF No. 51)
12)	<input checked="" type="checkbox"/> MOTION FOR LEAVE TO AMEND
13)	SCHEDULING ORDER
14)	<input checked="" type="checkbox"/> MOTION GRANTED
15)	(ECF No. 67)
16)	<input checked="" type="checkbox"/> MOTION FOR SUMMARY JUDGMENT
)	AND/OR PARTIAL SUMMARY JUDGMENT
)	<input checked="" type="checkbox"/> MOTION DENIED
)	(ECF No. 46)
)	<input checked="" type="checkbox"/> MOTION TO CONTINUE TRIAL
)	DATE
)	<input checked="" type="checkbox"/> MOTION DENIED
)	(ECF No. 74)

Date of hearing: September 26, 2011.

A hearing was held and oral arguments were heard on defendants motions for leave to amend the scheduling order (**ECF No. 67**); for leave to file a second amended answer (**ECF No. 51**); and to continue the trial date (**ECF No. 74**). Oral arguments were also heard on plaintiff's motion for summary judgment or partial summary judgment (**ECF No. 46**). Plaintiff also moved orally for attorney's fees in bringing this motion. The court reserved judgment on plaintiff's oral motion, giving the parties leave to file a supplemental memorandum and corresponding affidavits. Counsel Patrick Pleas and Gary Smith were present on behalf of

1 the plaintiff. Counsel Robert Siderius was present on behalf of
2 defendants.

3 **MOTION FOR LEAVE MOTION FOR LEAVE TO AMEND SCHEDULING ORDER**
4 **AND MOTION TO FILE SECOND AMENDED ANSWER**

5 Defendants' first amended answer failed to either admit or
6 deny paragraph 7 of the plaintiff's complaint which states:
7 "Plaintiff was an employee of Defendant's within the meaning of
8 29 U.S.C. § 203(e) of the FLSA." The failure to deny allegations
9 of the complaint, except as to the amount of damage, constitutes
10 an admission thereof. FRCP 8(b)(6). An admission in an answer
11 is binding until withdrawn. FRCP 8(b)(6). Defendants filed a
12 motion for leave to file second amended answer. (ECF No. 51).
13 Defendants later filed a motion for leave to amend scheduling
14 order to allow leave to file second amended answer. (ECF No.
15 67).

16 The Court heard arguments and considered briefs from counsel
17 regarding these motions. Counsel for the plaintiff argued they
18 are entitled to rely on the court rules and corresponding legal
19 implications despite any prejudice it may cause the defendants.
20 Counsel for the defendants argued they repeatedly denied the
21 assertion that plaintiff was defendants' employee throughout
22 their amended answer and discovery. Defense counsel reminded the
23 court that motions to amend pleadings are to be construed
24 liberally, and stated that the failure to admit or deny was an
25 oversight.

26 The court finds that a party seeking to amend a pleading
27 after the date specified in the scheduling order must first move
28 to amend the scheduling order and demonstrate "good cause" for

1 amendment under Rule 16(b); then if "good cause" is shown, the
2 party must also move for leave to amend the pleading and
3 demonstrate an amendment is proper under Rule 15. *C.F. ex rel.*
4 *Farnan v. Capistrano Unified School Dist.* 2011 WL 3634159 (9th
5 Cir. 2011) at *7-8; *See also Johnson v. Mammoth Recreations,*
6 *Inc.* 975 F.2d 604, 608 (9th Cir. 1992).

7 The court conducted a good cause analysis pursuant to Rule
8 16(b) in which it cited the following language from a recent
9 Ninth Circuit case which affirmed a lower courts decision to
10 amend a scheduling order:

11 The district court did not abuse its discretion in
12 concluding that this event, rather than any bad faith or
13 dilatory purpose, motivated Corbett's request, and that
14 Corbett thus did not unduly delay. We also credit the
15 district court's determination that the amendment "created
16 no meaningful case management issues" and did not "infringe[
17] on the efficient adjudication" of the litigation...No
18 additional discovery was necessary and no delay ensued."

19 *Farnan*, 2011 WL 3634159 at *7 (emphasis added; internal
20 citations omitted).

21 Similarly, the court found that granting the defendants' motion
22 would not create any meaningful case management issues, infringe
23 on the efficient adjudication of the litigation, or create a need
24 for additional discovery. Furthermore, the court noted that
25 plaintiff should have known that the employment status of the
26 defendant was a disputed fact.¹

27 ¹The court referenced defendants oral argument in which
28 counsel pointed out the defendants repeatedly denied every
allegation relating to the employment of plaintiff such as:
"Plaintiff worked as an employee of Flying B7 from November
11, 2008 and through February 22, 2009." Defendants also
denied the allegation: "Plaintiff was Defendants' employee
under RCW Chapter 49.46." (ECF No. 1, 20). 29 U.S.C. §
203(e) of the FLSA and RCW 49.46 both define an "employee"

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2 For the above mentioned reasons, and further based on a
3 review of the case records, the briefs of the parties and oral
4 arguments, **the court finds good cause exists to grant the**
5 **defendants' motion to amend the scheduling order (ECF No. 67).**
6 The court also finds, for the reasons stated in the good cause
7 analysis above and for those reasons articulated in oral
8 arguments and corresponding briefs, allowing defense counsel
9 leave to correct its oversight, does not create prejudice the
10 plaintiff, is not sought in bad faith, does not produce undue
11 delay in litigation and is not futile. Therefore, pursuant to
12 **Rule 15, the court grants the defendant's motion to for leave to**
13 **file second amended answer (ECF No. 51).**

14 **The scheduling order is hereby amended to allow the**
15 **defendants to file a second amended answer no later than Monday,**
16 **October 3, 2011.**

17 **MOTION FOR SUMMARY JUDGMENT AND/OR PARTIAL SUMMARY JUDGMENT**

18 Pursuant to Rule 56, plaintiffs filed a motion for summary
19 judgment and/or partial summary judgment. **(ECF No. 46).** A court
20 should grant a motion for summary judgment whenever "there is no
21 genuine dispute as to any material fact and that the movant is
22 entitled to a judgment as a matter of law." FRCP 56(a).

23 Counsel for the plaintiff argued there are two issues that
24 must be established: whether the plaintiff was employed by the
25 defendant and, if so, how many hours did he work. In support of
26 his summary judgment motion and as evidence of these issues,

27 _____
28 as: "any individual employed by an employer."

1 plaintiff proffered excerpts from the depositions of Gangadeep
2 Bains, the declaration of Madhukar Rana, the declaration of
3 Michelle Kultgen, the declaration of Christopher Blessing,
4 excerpts from the deposition of Kedar Raj Shrestha, a handwritten
5 chart prepared by the plaintiff and others detailing the dates
6 and hours he worked, and two receipts produced during discovery
7 which indicate the defendant paid the plaintiff \$1000 in cash
8 from the register. (ECF No. 48). In response, and as evidence
9 of plaintiff's lack of employment status, the defendants
10 proffered the declaration of Gangadeep Bains, excerpts from the
11 deposition of Kedar Shreshtha, the declaration of Nabin Joshi.

12 The court noted that the purpose of summary judgment is not
13 to permit the court to decide issues of fact; instead, it is to
14 determine whether there is an issue of fact to be tried. Hence,
15 it is not the place of the court at this stage in litigation to
16 make credibility determinations. The court also noted that it
17 must draw all reasonable inferences on behalf of the non-moving
18 party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106
19 S. Ct. 2505, 91 L.Ed.2d 202 (1986).

20 Based on a review of the case record, the briefs submitted
21 by the parties, the evidence proffered by the parties, and oral
22 arguments, **the court finds** the threshold issue of material fact,
23 plaintiff's employment status, is disputed. Thus, the court
24 **denies plaintiff's motion for summary judgment and/or partial**
25 **summary judgment.** (ECF No. 46).

26
27 **MOTION TO CONTINUE TRIAL DATE**
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1 The Court heard arguments from counsel. Counsel for the
2 defendant argued they seek the continuance in order to ensure one
3 of their witness would be present at the trial. As the outcome
4 of this case will likely be determined on credibility issues,
5 defense counsel argued that it is important for the trier of fact
6 to see each witness testify in person. Counsel for the plaintiff
7 opposed the motion to continue and stated that his client would
8 like to resolve this matter so that he can return to Nepal and
9 see his family. The court **denies the defendant's motion to**
10 **continue to trial (ECF No. 74).**

11 **IT IS ORDERED that:**

- 12 1. Pursuant to Rule 16, the court finds good cause exists
13 to grant the defendant's motion to amend the scheduling
14 order (ECF No. 67).
- 15 2. Pursuant to Rule 15, the court grants the defendant's
16 motion to for leave to file second amended answer (ECF
17 No. 51).
- 18 3. **The scheduling order is hereby amended to allow the**
19 **defendants to file a second amended answer no later**
20 **than Monday, October 3, 2011.**
- 21 4. Pursuant to Rule 56, the court denies plaintiff's
22 motion for summary judgment and/or partial summary
23 judgment. (ECF No. 46).
- 24 5. The court **denies the defendant's motion to continue to**
25 **trial (ECF No. 74).**

26 The District Court Executive is directed to file this Order
27 and provide copies to counsel.

28 DATED this 26th day of September, 2011.

s/James P. Hutton
JAMES P. HUTTON
UNITED STATES MAGISTRATE JUDGE